**(1999) 05 KL CK 0004**

**In the High Court Of Kerala**

**Case No :** W.A. No. 1569/96

Captain, E.N. APPELLANT

Vs

District Collector and Others RESPONDENT

**Date of Decision :** 25-05-1999

**Acts Referred:**

Kerala Revenue Recovery Act, 1968 — Section 52, 53, 54

**Citation :** (1999) 2 KLJ 37

**Hon'ble Judges :** A.R. Lakshmanan, Acting C.J.;S. Sankarasubban, J

**Bench :** Division Bench

**Advocate :** O. Ramachandran Nambiar and K.P. Santhi, for the Appellant; P.K. Ravikrishnan, Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

A.R. Lakshmanan, A.C.J.

1. The unsuccessful Petitioner in O.P. 13768 of 1996 is the Appellant herein. The Original Petition was filed to quash Ext. P-5 and for a mandamus directing the Respondents to confirm the sale conducted on 23rd September 1994 and direct the third Respondent to measure the property and put in possession of the property to the Petitioner. A further prayer to declare that the Order No. 6714/94/M, dated 30th March 1995 issued by the second Respondent and Ext. P-5 dated 5th July 1996 are null and void was also sought for.

2. Appellant is the successful bidder in the sale conducted on 23rd September 1994. He has deposited the bid amount of Rs. 10,868 as per the instructions of the third Respondent in respect of 13 cents of wet land (paddy field) in Sy. No. 635/2 of Chowwara Village. Since the sale certificate was not issued, the Appellant made Exts. P-3 and P-4 representations to Respondents 1 and 2 Respectively for issuance of sale certificate to which he is entitled. However, the sale certificate was not issued to him. But, he was served with Ext. P-5 order dated 5th July 1996 stating that on the basis of an order dated 30th March 1995,

 

the sale has been set aside since the bid amount was too low. It is stated that only on receipt of Ext. P-5 order the Appellant came to know about the order dated 30th March 1995 of the second Respondent. Immediately he applied for a copy of the same, obtained it and produced the same before this Court as Ext. P-6 along with C.M.P. 25857 of 1996. According to the Appellant, he is entitled to get the sale confirmed and also for a sale certificate issued in his favour. Since the same were not issued, he approached this Court by filing the above Original Petition praying to quash Ext. P-5 and also to declare that Ext. P-6 is illegal and void and for other consequential reliefs.

3. Before the learned Single Judge it was contended that since the Appellant is the highest bidder in the auction conducted on 23rd September 1994, Respondents are duty bound to confirm the auction in his favour. It was also argued that there was no objection filed by anyone to set aside the sale and that before conducting a re-auction, no notice was issued to him. It was also contended before the learned Judge that inadequacy of sale price is not a ground to set aside the sale. The learned Judge was of the view that since the auction was not confirmed in favour of the Appellant, there was no necessity of giving any notice to the Petitioner to show cause why a re-auction be not conducted. The learned Judge has further held that since the decision of the Sub-Collector has already been communicated to the Appellant-Petitioner by the Tahsildar which is evident from Ext. P-6, there is sufficient notice to him that the auction in his favour has not been confirmed. Aggrieved against the said judgment, the Petitioner has preferred the Writ Appeal.

4. Though several contentions have been raised, there is no need to go into all the submissions for the simple reason that Ext. P-6 order was passed against the Appellant without affording any opportunity. There is no indication in the order in Ext. P-6 that any notice was issued to the Appellant before the said order was passed. Our attention was drawn to Sections 53 and 54 of the Revenue Recovery Act, 1968. Section 53 says that an application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake or fraud in publishing or conducting the sale at any time within thirty days from the date of the sale of immovable property. The section further provides that no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof Section 54. also provides that the Collector shall make an order confirming the sale on the expiry of 30 days from the date of sale, if no application to set aside the sale is made u/s 52 or 53. The proviso to Section 54 says that if the Collector has reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing set aside the sale. The above proviso to Section 54 empowers the Collector to set aside the sale, after recording his reasons in writing, although no application either u/s 52 or Section 53 has been made. In the instant case, it is not in dispute that no application to

 

set aside the sale. On the grounds mentioned in Section 53 has been made by any party including the owner. We are of the opinion that Section 53 proceedings to set aside revenue sale is a collateral independent one and is of quasi-judicial nature. It is not in dispute that no notice was issued to the Appellant/auction purchaser before setting aside the sale. We are of the firm view that the procedure adopted by the Respondents in setting aside the revenue sale without notice to the auction purchaser is illegal.

5. We, therefore, have no hesitation in setting aside Ext. P-6 and the consequential order issued by the Tahsildar under Ext. P-5 and remit the entire matter for fresh consideration by the Respondents. Respondents shall give an opportunity to the Appellant and pass appropriate orders in accordance with law. We reserve the liberty to the Appellant to raise the contention of the period of limitation provided under Sections 53 and 54 of the Act before the Respondents. Respondents shall issue notice to the Appellant within one month from the date of receipt of a copy of this judgment either from this Court or on production of the same by the Appellant whichever is earlier and pass orders after affording an opportunity to the Appellant within two months thereafter. If notice is not issued to the Appellant within the time stipulated above, the sale conducted on 23rd September 1994. shall stand confirmed in favour of the Appellant.

The Writ Appeal is allowed to the above Extent. No costs.

 